IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL REVISION APPLICATION NO.35 OF 2007

Mr.Ravi Pittie : Petitioner

V/s.

Mr.Rajesh Harikrishan Bhalla & Anr. : Respondents

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Mr.V.A.Shastry for the petitioner.

Mr.G.S.Godbole for the respondents.

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**CORAM : S.A.BOBDE, J.**

DATE : AUGUST 13, 2007.

ORAL ORDER :

1. Admit.

By consent of the parties, taken up for final hearing.

2. The petitioner has challenged the order rejecting his application under section 8 of the Arbitration and Conciliation Act for referring the dispute in the suit filed by the respondents to arbitration.

3. The respondent nos.1 & 2 have sued the petitioner for eviction and possession of the suit flat. In that suit, the petitioner applied for referring the subject-matter of

the dispute to arbitration because of an arbitration clause in the Agreement of Leave and Licence. However, such an agreement has been signed only by the respondent no.2 i.e. the sister of the respondent no.1. The trial Court rejected the petitioner's application on the ground that referring the case only in relation to one of the plaintiffs who has signed the agreement, would result in two judgements on the same point by two competent authorities.

4. The learned counsel for the petitioner submitted that the order rejecting his application is vitiated by an illegality because clearly the respondent no.2 is bound by the arbitration clause in the licence agreement and there is a duty to refer the matter to arbitration. The submission on behalf of the petitioner cannot be accepted in this case, in view of the fact that the cause of action and the relief claimed by both the respondents is one and the same, viz., possession of the suit premises. Indeed, such a cause of action cannot be split in any way. It is not possible to refer the dispute only in relation to one of the parties to arbitration where the other party is entitled to maintain the suit. What is proper course to follow in such a situation has been considered by the Supreme Court in Sukanya Holdings (P) Ltd. v. Jayesh H. Pandya & another (2004 (1) Bom.C.R. 413). The Supreme

Court considered section 8 of the Arbitration Act and held that what can be referred to is ‘a matter’ and that means the entire subject-matter of the suit if subject to the arbitration agreement. The Supreme Court observed as follows:-

> "13. Secondly, there is no provision in the Act that when the subject-matter of the suit includes subject matter of the arbitration agreement as well as other disputes, the matter is required to be referred to arbitration. There is also no provision for splitting the cause or parties and referring the subject matter of the suit to the arbitrators.
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> 14. Thirdly, there is no provision as to what is required to be done in a case where some parties to the suit are not parties to the arbitration agreement. As against this, under section 24 of the Arbitration Act, 1940, some of the parties to a suit could apply that the matters in difference between them be referred to arbitration and the Court may refer the same to arbitration provided that the same can be separated

from the rest of the subject-matter of the suit. The section also provided that the suit would continue so far as it related to parties who have not joined in such application.

15. The relevant language used in section 8 is: "in a matter which is the subject of an arbitration agreement". The Court is required to refer the parties to arbitration. Therefore, the suit should be in respect of "a matter" which the parties have agreed to refer and which comes within the ambit of arbitration agreement. Where, however, a suit is commenced...."as to a matter" which lies outside the arbitration agreement and is also between some of the parties who are not parties to the arbitration agreement, there is no question of application of section 8. The words "a matter" indicate that the entire subject matter of the suit should be subject to arbitration agreement.

16. The next question which requires consideration is--even if there is no

> provision for partly referring the dispute to arbitration, whether such a course is possible under section 8 of the Act. In our view, it would be difficult to give an interpretation to section 8 under which bifurcation of the cause of action, that is to say, the subject matter of the suit or in some cases bifurcation of the suit between parties who are parties to the arbitration agreement of the suit between parties who are parties to the arbitration agreement and others is possible. This would be laying down a totally new procedure not contemplated under the Act. If bifurcation of the subject matter of a suit was contemplated the legislature would have used appropriate language to permit such a course. Since there is no such indication in the language, it follows that bifurcation of the subject matter of an action brought before a judicial authority is not allowed."

5. There is, therefore, no merit in the Revision Application. The Revision Application is dismissed.

S.A. BOBDE, J.